

Robert N. H. Christmas (RC 6189)
Nixon Peabody LLP
437 Madison Avenue
New York, New York 10022
Tel.: (212) 940-3103
Fax: (212) 940-3111
email: rchristmas@nixonpeabody.com

Attorneys for the Plaintiffs

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----		X
MICHAEL WERDIGER, INC. and	:	
ADAMAS MANUFACTURING CORPORATION,	:	
	:	
Plaintiffs,	:	Case No.: 07 Civ. 6934 (LMM)
	:	
- against -	:	
	:	
LUCENT DIAMONDS, INC. and	:	
ALEX GRIZENKO,	:	
	:	
Defendants.	:	
-----		X

MOTION FOR ENTRY OF DEFAULT JUDGMENT

TO THE HONORABLE LAWRENCE M. MCKENNA
UNITED STATES DISTRICT JUDGE:

Plaintiffs Michael Werdiger, Inc. ("MWI") and Adamas Manufacturing Corporation ("Adamas" and, collectively with MWI, "Plaintiffs"), by their attorneys, Nixon Peabody LLP, as and for their Motion for entry of default judgment against defendants, Lucent Diamonds, Inc. and Alex Grizenko, allege as follows:

1. Plaintiffs move pursuant to Rule 55.2(b) of the Civil Rules of this Court and pursuant to Federal Rule of Civil Procedure 55(b)(2), for entry of default judgment against defendants Lucent Diamonds, Inc. ("Lucent") and Alex Grizenko ("Grizenko") for failure to

appear, answer, plead, or move with respect to the Complaint, despite due service upon them, in the amount of \$276,530.80, plus late fees and collection costs (including the fees, costs and expenses of this action) as provided in the governing documents. Given that Lucent and Grizenko are the only defendants, entry of judgment will conclude this action.¹

Background of the Action

2. This action is for breach of contract, goods sold and delivered, and unjust enrichment, on unpaid invoices for precious stones and labor purchased from Plaintiffs MWI and Adamas by Defendant Lucent, and to enforce that certain guarantee by Defendant Grizenko of the obligations of Lucent.

3. Lucent purchased product from MWI and Adamas, in the form of polished diamonds and other precious stones, and purchased certain services from MWI and Adamas thereby incurring labor charges, beginning in 2002. The total amount owed is \$276,530.80 in principal, as set forth in Exhibit B to the Complaint in this Action.²

4. As alleged in the Complaint, a portion of the diamonds were sent to Lucent on a consignment basis. This was done by the use of a written consignment memorandum from MWI or Adamas delivered to Lucent with the diamonds in question. Lucent would subsequently indicate its approval of the particular stones, and MWI or Adamas would issue an invoice. The remainder of the diamonds and services purchased by Lucent were ordered without a consignment or other pre-approval process.

¹ A copy of the proposed Order granting this Motion, and a proposed Default Judgment, are attached together as Exhibit 1 to the accompanying Declaration of Robert N. H. Christmas, executed on November 16, 2007 ("Christmas Decl.").

² A copy of the Complaint ("Compl.") is attached as Exhibit 2 to the Christmas Declaration.

5. With the exception of certain returns, Lucent accepted without objection the goods and services provided by MWI and Adamas. Lucent received and accepted without objection the invoices issued by MWI and Adamas for the goods and services sold by MWI and Adamas to Lucent (collectively, the “Invoices”). The dates and amounts of the Invoices are listed in Exhibit B to the Complaint.

6. Lucent has accepted and retained the goods and services it purchased from MWI and Adamas, but Lucent has refused to pay the outstanding amount of \$276,530.80 due and owing to MWI and Adamas for those goods and services.

7. By letter dated June 10, 2007, MWI, on behalf of itself and Adamas, demanded payment from Lucent and Grizenko for the unpaid-for product and services provided by MWI and Adamas to Lucent in the total amount of \$276,530.80 (the “Demand Letter,” Exhibit C to the Complaint). Despite the Demand Letter, Lucent failed to make any payment to MWI or Adamas since August 2006.

8. Pursuant to a personal guaranty (the “Guaranty”) executed and delivered by Grizenko, among other things Grizenko personally guaranteed full, faithful and complete performance by Lucent of all covenants, promises, conditions, obligations and warranties on the part of Lucent to be observed and performed in connection with past, present, and future purchases, including without limitation all sums due under the Invoices. See Complaint Exhibit A.

9. On June 22, 2007, Grizenko acknowledged Lucent’s default and its failure to pay the Invoices via an email to MWI (Complaint Exhibit D). However, despite the Demand Letter, Grizenko has likewise failed to satisfy Lucent’s obligations pursuant to the Invoices.

Procedural History

10. This action was filed on August 2, 2007. As set forth in the accompanying Christmas Declaration, Defendant Lucent was served with a copy of the Summons and Complaint pursuant to Section 307 of the New York Business Corporation Law (“B.C.L.”) on August 6, 2007, through the New York Secretary of State and registered mail. Proof of that service is attached here as Christmas Decl. Exhibit 3.

11. Pursuant to the terms of the Guaranty executed by Defendant Alex Grizenko, a copy of which is attached to the Complaint as Exhibit A, he agreed that service upon Defendant Lucent Diamonds, Inc. would constitute service upon him. Accordingly, in addition to service upon Lucent Diamonds, Inc. pursuant to Section 307 of the BCL (described in Christmas Decl. Exhibit 3), a separate service of the Summons and Complaint was made on August 3, 2007 by certified mail to Defendant Alex Grizenko in care of Lucent Diamonds, Inc. Proof of that service is Christmas Declaration Exhibit 4.

12. Grizenko has acknowledged receipt of the Summons and Complaint, in an email dated August 22, 2007. A true copy of that email is Christmas Declaration Exhibit 5.

13. More than 20 days has passed since service of the Summons and Complaint on each Defendant. Accordingly, the period for answering or otherwise responding to the Complaint pursuant to Federal Rule of Civil Procedure 12(a) has expired.

14. Hence, on August 30, 2007, Plaintiffs applied to the Clerk of this Court for entry of default against Lucent and Grizenko pursuant to Federal Rule of Civil Procedure 55(a) (the “Application”). On August 31, 2007, the Clerk of this Court certified defendants’ default in this case (the “Certificate”). Both the Application and the Certificate have been

entered electronically on the docket in this case. A true copy of that Certificate is Christmas Declaration Exhibit 6.

15. On or about November 9, 2007, Daniel Duggan, Esq., of Arvada, Colorado, contacted counsel for Plaintiffs by telephone, and indicated he would be representing Lucent and Grizenko in the underlying dispute between the parties. However, Mr. Duggan indicated that Lucent and Grizenko would not be opposing this Motion.

Amount of Judgment

16. Pursuant to the terms of the Invoices, Lucent is obligated to pay MWI and Adamas late payment fees (or interest) of 1% per month (.03% per diem) on amounts due and owing, respectively, to MWI and Adamas, plus reasonable expenses of collection, including attorney's fees. Attached as Exhibit 7 is an exemplar of the Invoices issued to Lucent, with the governing language concerning late fees and costs of collection. Accordingly, there is due and owing from Lucent and Grizenko late payment fees on the principal obligations of Lucent. If calculated through December 15, 2007, that amount is the sum of \$155,524. Attached as Exhibit 8 to the Christmas Declaration is Plaintiffs' calculation of interest through that date. With respect to costs of collection, they are described in the Christmas Declaration, and set out in Christmas Declaration Exhibit 9.

WHEREFORE, MWI and Adamas respectfully request that the Court grant judgment against Lucent and Grizenko as demanded in the Complaint in the principal amount of \$276,530.80, plus late fees, attorney's fees and collection costs as provided under the terms of the Invoices.

Dated: New York, New York
November 16, 2007

NIXON PEABODY LLP

By: /s/ Robert N. H. Christmas
Robert N. H. Christmas
(RC 6189)

437 Madison Avenue
New York, New York 10022
Tel.: (212) 940-3000

Attorneys for Plaintiffs
Michael Werdiger, Inc. and
Adamas Manufacturing Corporation